



SENATE BILL 683: Safe Harbor/Victims of Human Trafficking

2013-2014 General Assembly

Committee:	Senate Judiciary I	Date:	May 9, 2013
Introduced by:	Sens. Goolsby, Barringer, Kinnaird	Prepared by:	Susan Sitze
Analysis of:	PCS to First Edition S683-CSSA-42		Committee Counsel

SUMMARY: *The proposed committee substitute for Senate Bill 683 would increase the penalties for human trafficking, involuntary servitude, and sexual servitude.*

The PCS reduces the penalty for solicitation, exempts minors from the increased penalty for soliciting or patronizing a minor prostitute, removes the impoundment of vehicles, and reduces the time before allowing a petition for expunction.

CURRENT LAW: Human trafficking and related offenses are prohibited under Article 10A of Chapter 14 of the General Statutes. Violations are a Class F felony if committed against an adult, a Class C felony if committed against a minor.

- Pursuant to G.S. 14-43.11, a person commits the offense of human trafficking when that person knowingly recruits, entices, harbors, transports, provides, or obtains another person by any means with the intent that the other person be held in involuntary servitude or sexual servitude.
- Pursuant to G.S. 14-43.12, a person commits the offense of involuntary servitude when that person knowingly and willfully holds another in involuntary servitude.
- Pursuant to G.S. 14-43.13, a person commits the offense of sexual servitude when that person knowingly subjects or maintains another in sexual servitude.

Prostitution is prohibited under Article 27 of Chapter 14 of the General Statutes, and punishable as a Class 1 misdemeanor. Pursuant to G.S. 14-190.18, promoting prostitution of a minor is a Class C felony. Participating in prostitution of a minor by "patronizing a minor prostitute" is a Class F felony under G.S. 14-190.19, and mistake of age is not a defense.

BILL ANALYSIS:

Sections 1-3 of the bill would redefine the offenses of human trafficking, involuntary servitude, and sexual servitude to provide punishment for persons who act *in reckless disregard* or with actual knowledge of what is occurring. The offenses are all currently punishable as a Class F felony if the victim is an adult; a Class C felony if the victim is a minor. The bill would increase the punishment for offenses against adult victims, making the offenses punishable as Class E felonies. Mistake of age or consent of a minor would not be a defense to prosecution.

Section 4(a) of the bill would repeal existing statutes pertaining to prostitution and promoting/participating in prostitution of a minor. **Section 4(b)** would recodify an existing statute pertaining to the admissibility of evidence concerning a person's reputation and any prior convictions in a trial on prostitution.

Section 5 of the bill rewrites Article 27 of Chapter 14 of the General Statutes pertaining to the criminal offense of prostitution.



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Prostitution is defined in the new statute as "the performance of, offer of, or agreement to perform vaginal intercourse, any sexual act as defined in G.S. 14-27.1(4) (see background), or any sexual contact as defined in G.S. 14-27.1(5) (see background) for the purpose of sexual arousal or gratification, for money or any other consideration.

Prostitution -- A person who knowingly engages in prostitution would be guilty of a Class 1 misdemeanor. A first time offender would automatically receive deferred prosecution and probation for a period of 12 months, during which time the person must not violate any criminal laws, refrain from possessing any firearm or dangerous weapon, submit to at least 3 drug tests at his or her own expense, obtain a vocational assessment, and attend at least 10 counseling sessions. The person could also be required to pay a fine and costs, attend or reside in a facility, provide family support, and refrain from the use of controlled substances. Upon successful completion of probation, the court would discharge the person and dismiss the proceedings against the person; the person would then be eligible to apply for expunction of the criminal record. Minors would be immune from prosecution for prostitution, but they would be subject to the temporary custody provisions of the Juvenile Code. The officer taking the minor into custody would be required to report an allegation of human trafficking and sexual servitude to the county director of social services. Social services would then be required to begin an investigation into child abuse or child neglect within 24 hours of the notification

Solicitation of Prostitution – Any person who solicits another for the purpose of prostitution would be guilty of a Class 1 misdemeanor for a first offense and a Class I felony for a second or subsequent offense; solicitation of a minor or a person who is severely or profoundly mentally disabled would be a Class C felony, except that a person under the age of 18 who solicits a minor will not receive the Class C felony.

Promoting Prostitution – This offense would occur when a person:

- Advances prostitution by soliciting others for the purpose of prostitution or keeping a place of prostitution.
- Profits from prostitution by compelling a person to become a prostitute or arranging or offering to arrange a situation in which a person may practice prostitution.

A person who commits this offense would be guilty of a Class F felony generally. A violation within 1,000 feet of a school would be a Class C felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class C felony.

Promoting Prostitution of a Minor or Mentally Disabled Person – This offense would occur when a person:

- Advances or profits from prostitution involving a minor or severely or profoundly mentally disabled person engaged in prostitution. A violation would generally be a Class B2 felony.
- Confines a minor or a severely or profoundly mentally disabled person against that person's will by the infliction or threat of great bodily harm, or by administering drugs or alcohol and then compels the person to engage in prostitution, arranges a situation in which the person may practice prostitution, or profits from prostitution by the person. A violation would generally be a Class B1 felony.

A violation within 1,000 feet of a school would be a Class B1 felony. A violation by a person with a prior conviction for this offense or another offense in this Article would be a Class B1 felony. The bill would provide for the forfeiture of gain acquired through the criminal activity of any person convicted of keeping a place of minor prostitution or confining a minor for purposes of prostitution.

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Patronizing a Prostitute – A first offense would generally be a Class F felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class C felon. An offense occurring within 1,000 of a school would also be a Class C felony.

Patronizing a Minor or Mentally Disabled Person Engaged in Prostitution -- A first offense would generally be a Class C felony. Any person who has a prior conviction for this offense or another offense in this Article would be punished as a Class B2 felon. An offense occurring within 1,000 of a school would also be a Class B2 felony. A defendant may assert as an affirmative defense his or her reasonable belief that the person engaged in prostitution was of the age of 18 years or older or was not severely or profoundly mentally disabled at the time of the act giving rise to the charge. The offense of patronizing a minor does not apply to a person under the age of 18, but they could still be charged with the offense of patronizing a prostitute or patronizing a mentally disabled person.

Probation Conditions – The court would have authority to order any convicted defendant to be examined for venereal disease. If a person convicted of a prostitution-related offense receives a sentence with probation, and the person has a venereal disease, the period of probation will begin upon such terms and conditions as will insure medical treatment and prevent the spread of the disease. Any female convicted of a prostitution-related offense would be assigned to a female probation officer.

Section 6 of the bill would amend the law pertaining to orders for electronic surveillance to provide that such orders may be granted when the interception of wire, oral, or electronic communications may expedite the apprehension of persons indicted for human trafficking, involuntary servitude, and sexual servitude.

Sections 7 and 8 of the bill would amend the probation statutes to authorize a probation officer to supervise a person placed on probation under a deferred prosecution agreement for prostitution.

Section 9 of the bill would amend the grounds for appropriate relief which may be asserted by a defendant more than 10 days after entry of judgment, to provide that the defendant may assert that he or she was convicted of a first offense of misdemeanor prostitution and prosecution was not deferred, that defendant's participation in the offense was a result of having been a victim of human trafficking, and that defendant seeks to have the conviction vacated. **Section 10** of the bill would provide for the NC Court of Appeals to have jurisdiction to hear a motion for appropriate relief filed by a defendant who was a victim of human trafficking. The bill specifies evidence that may be considered by the court in determining whether the motion should be granted.

Section 11 of the bill would provide for the expunction of the criminal records of a conviction of misdemeanor prostitution if the person has no prior conviction for a violent felony or misdemeanor, and the person was a victim of human trafficking or sexual servitude, the person has no prior convictions for a prostitution offense, or the person was sentenced under deferred prosecution and is eligible to apply for expunction as a result of discharge and dismissal upon completion of probation. **Sections 12 and 13** would make clarifying changes to statutes governing access to expunged records.

Section 14 of the bill would amend the list of aggravating factors present in an offense that make an aggravated sentence appropriate, to include the fact that the offense was human trafficking, involuntary servitude, or sexual servitude that involved multiple victims or that caused a victim to suffer serious injury as a result of the offense.

Section 15 of the bill would amend the Crime Victims Compensation Act to recognize as a claimant a person who was convicted of a first offense of misdemeanor prostitution and whose participation in the offense was a result of having been a victim of human trafficking under North Carolina law or federal law.

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Section 16 of the bill would amend the Juvenile Code to include within the definition of abused juveniles any juvenile under age 18 whose parent, guardian, custodian, or caretaker commits or allows to be committed an offense of human trafficking, involuntary servitude, or sexual servitude against the child.

Section 17 of the bill would provide for the mandatory payment of restitution to victims of human trafficking, involuntary servitude, or sexual servitude by a defendant convicted of the offense. The defendant would be required to pay the greater of the gross income or value to the defendant of the victim's labor or services, or the value of the victim's labor under the Minimum Wage Law and overtime provisions of the Fair Labor Standards Act. Subject to the availability of funds, the Department of Health and Human Services would be authorized to provide or fund emergency services and assistance to victims. The Attorney General, a district attorney, or any law enforcement official would be required to certify to the appropriate federal authorities a victim's cooperation or willingness to cooperate in a criminal investigation in order to enable the victim, if eligible, to qualify for a special immigrant visa and to access any available federal benefits. Cooperation would not be required for victims under the age of 18.

Sections 18-24 of the bill would amend existing statutes to make conforming changes made necessary by other provisions of this bill.

EFFECTIVE DATE: The bill would become effective December 1, 2013 and apply to offenses committed on or after that date.

BACKGROUND:

G.S. 14-27.1(4) and (5)....

- (4) "Sexual act" means cunnilingus, fellatio, anilingus, or anal intercourse, but does not include vaginal intercourse. Sexual act also means the penetration, however slight, by any object into the genital or anal opening of another person's body: provided that it shall be an affirmative defense that the penetration was for accepted medical purposes.
- (5) "Sexual contact" means (i) touching the sexual organ, anus, breast, groin, or buttocks of any person, (ii) a person touching another person with their own sexual organ, anus, breast, groin, or buttocks, or (iii) a person ejaculating, emitting, or placing semen, urine, or feces upon any part of another person.